No. 81043-5

CLERK

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Parentage of:
MARNITA FRAZIER, Child,

JOHN CORBIN,
Petitioner,

v.

PATRICIA REIMEN,
Respondent,

EDWARD FRAZIER,
Respondent.

BRIEF OF AMICUS CURIAE NORTHWEST WOMEN'S LAW CENTER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON CASES

CASES FROM OTHER JURISDICTIONS

STATUTES

OTHER AUTHORITIES

I. IDENTITY AND INTEREST OF AMICUS

The Northwest Women's Law Center (NWLC) is a non-profit public interest organization dedicated to protecting the rights of women through litigation, education, legislation and the provision of legal information and referral services. Since its founding in 1978, NWLC has worked actively on all fronts to protect and advance the legal rights of women and children.

Toward that end, NWLC has long worked to ensure that the law recognizes and respects the broad range of family relationships and adapts to meet the changing needs of children and families. Of particular relevance to this case, NWLC served as co-counsel for the petitioner in *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005), in which this Court recognized the status of *de facto* parents in Washington.

II. STATEMENT OF THE CASE

NWLC's statement of the case is drawn from the Petition for Review filed in this matter and from the Court of Appeals' decision dated November 5, 2007.

The child at the center of this case is M.F., a 15 year-old girl. M.F.'s biological parents Patricia Reimen and Edwin Frazier divorced in 1995 when M.F. was one year old. *In re Parentage of M.F.*, 141 Wn.

App. 558, 562, 170 P.3d 601 (2007). Petitioner John Corbin married Ms. Reimen in October 1995. *Id.*

Mr. Corbin has parented M.F. for nearly all her life. Pet. for Rev. at 2. M.F. lived with Mr. Corbin and Ms. Reimen before and during the couple's marriage, and had little contact with Mr. Frazier. *Id.* Ms. Reimen and Mr. Corbin had two sons together, who are half-brothers to M.F. *Id.*

Mr. Corbin and Ms. Reimen separated in 2000 and divorced in 2002. *M.F.*, 141 Wn. App. at 562. During the separation and following the divorce, Mr. Corbin continued to maintain his relationship with M.F. Pet. for Rev. at 2-3.

In 2006, Mr. Corbin commenced this proceeding, seeking recognition as M.F.'s *de facto* parent in light of this Court's decision in *In re Parentage of L.B.* Ms. Reimen moved to dismiss Mr. Corbin's petition pursuant to CR 12(b)(6), which the trial court denied. The Court of Appeals granted discretionary review of the ruling and reversed the trial court, holding that a former stepparent may not maintain a cause of action under *L.B.* to establish *de facto* parent status for a former stepchild. *M.F.*, 141 Wn. App. at 562-63.

III. ARGUMENT

On its face, this case arises in a different factual context than *L.B*, which centered on a child who had been co-parented from birth by a same-sex couple. It also presents a situation where a child clearly has three parents in her life – her two biological parents and Mr. Corbin, who has functioned as her *de facto* parent since she was an infant.[1] Nonetheless, the principles announced by this Court in *L.B.* apply with equal force in this case.

In *L.B.*, this Court recognized that parent-child relationships do not simply arise from biology or legal adoption, but may also arise when a person "in all respects functions as a child's actual parent." *L.B.*, 155 Wn.2d at 691 n.7. Such parent-child relationships may be formed regardless of whether a child already has two legal parents. There is no reason why a person who has functioned as a child's third parent – such as a former stepparent – should not be able to seek recognition as a *de facto* parent, as long as he or she meets the stringent criteria set forth in *L.B.* To

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[1] In *L.B.*, the status of the child's biological father was uncertain. L.B. was conceived through artificial insemination with semen donated by a male friend. *L.B.*, 155 Wn.2d at 682. After the petitioner in *L.B.* sought to establish her parentage of L.B. when the child was six years old, the child's biological mother and the sperm donor married and the sperm donor signed an affidavit of paternity. *Id.* at 685 n.3. However, the sperm donor was not a party to the action and his whereabouts were unknown at the time the Supreme Court rendered its decision. *Id.* Still, the facts of *L.B.* clearly allowed for the possibility that L.B. might end up with three legal parents.

hold otherwise would ignore the realities of the sometimes complex family structures that exist today and would cause children to lose critical relationships with persons they regard as parents.

Nor is there any reason why the *de facto* parent doctrine adopted by this Court in *L.B.* should be limited only to situations involving children raised by same-sex couples. Indeed, it would inappropriately discriminate on the basis of the sexual orientation of a child's parents if the doctrine were so limited. Other jurisdictions which have recognized the status of *de facto* parents have not adopted such a limited application of the doctrine, nor should the Court in this case.

1. A Child May Have More Than Two Parents

As family structures change and reproductive technologies expand, it has become less unusual for children to have more than two adults functioning as their parents. *See, e.g.*, Laura N. Althouse, *Three's Company? How American Law Can Recognize a Third Social Parent in Same-Sex Headed Families*, 19 Hastings Women's L.J. 171, 172 (2008) (noting "[a] three-parent family structure is becoming increasingly common in the United States."). As a result, "[s]trict adherence to a two-parent paradigm does not accurately reflect many of today's families, such as multiple parents due to divorce and remarriage, or multiple gay and

lesbian parents." Melanie B. Jacobs, *My Two Dads: Disaggregating Biological and Social Paternity*, 38 Ariz. St. L.J. 809, 813 (2006).

This reality challenges traditional views that a child may have only two parents.[2] But Washington law, as well as the American Law Institute, already provides a framework for recognizing that a child may have more than two parents in certain circumstances, reflecting policies that meet changing family structures.

a. The Principles Announced In *L.B.* Support Recognizing the Rights of More Than Two Parents in Proper Cases

This Court has recognized the need to ensure that the law keeps pace with transformations in the American family in order to protect the needs of children and families. As this Court noted in *L.B.*, "inevitably, in the field of familial relations, factual scenarios arise, which even after a strict statutory analysis remain unresolved, leaving deserving parties without any appropriate remedies, often where demonstrated public policy is in favor of redress." *L.B.*, 155 Wn.2d at 687. In those situations, "Washington courts have consistently invoked their equity powers and

[2] Over 20 years ago this Court acknowledged the reality that children sometimes have more than two parents and the importance of preserving such relationships in *McDaniels v. Carlson*, 108 Wn.2d 299, 313, 738 P.2d 254 (1987) (holding that regardless of the outcome of the paternity determination, both fathers' relationships with the child should be preserved).

common law responsibilities to respond to the needs of children and families in the face of changing realities." *Id.* at 689.

To meet these changing realities, this Court held in *L.B.* that "Washington's common law recognizes the status of *de facto* parents and grants them standing to petition for a determination of the rights and responsibilities that accompany legal parentage in this state." *Id.* at 683. The Court established the following criteria to determine whether a person has standing to seek recognition as a child's *de facto* parent:

> (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and the child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of financial compensation, and (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.

Id. at 708. The Court further indicated that "recognition of a *de facto* parent is 'limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life.'" *Id.* (quoting *C.E.W. v. D.E.W.*, 845 A.2d 1146, 1152 (Me. 2004)).

Nothing in this Court's decision in *L.B.* indicates that a person may only seek *de facto* parent status in situations involving children raised by same-sex couples. The Court also did not suggest that former stepparents

are foreclosed from seeking *de facto* parent status, nor did it indicate that *de facto* parent status may not be recognized if a child has two legal parents. Rather, the Court's analysis is functional in nature, rejecting a focus on labels and categories, and instead requiring that trial courts make an inquiry into whether a parent-child relationship exists and, if so, whether it was fostered by the otherwise legal parent.

In developing this functional approach, the Court's close examination of Washington law in *L.B.* revealed a "strong presumption in favor of parental involvement, fostering and protecting a child's significant relationships." *Id.* at 700. As the Court noted in *L.B.*:

> The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

Id. (quoting RCW 26.09.002). As a result, "Washington courts have not hesitated to exercise their common law equitable powers to award custody of minor children, at times making such awards to persons not biologically related to the child, but who nonetheless have unequivocally 'parented' them." *Id.* at 699.

Applying these principles, there is no reason why a heterosexual stepparent such as Mr. Corbin should not be able to seek *de facto* parent status, provided that he is able to meet the rigorous test set forth in *L.B.* Indeed, following the Court of Appeals' decision in this case, a different panel of Division I held in *In re Parentage of J.A.B.*, 146 Wn. App. 417, 191 P.3d 71 (2008), that a man who had developed a parental relationship with the child of his female partner was the child's *de facto* parent. The court affirmed the trial court's ruling, which established a parenting plan providing that the child would reside with the *de facto* parent a majority of the time, with "residential time with all three parents." *Id.* at 422. In doing so, the court squarely rejected the reasoning of the earlier decision by the Court of Appeals in this case. This Court should do the same.

b. Washington's UPA And Adoption Statutes Permit Children To Have More Than Two Parents

Washington's Uniform Parentage Act (UPA) recognizes situations in which a child may have more than two parents. For example, under RCW 26.26.735, a woman who donates ovum for use in assisted reproduction may be a parent of the child, provided that the donor and the woman who gives birth to the child agree in writing that the donor is to be a parent. The statute also permits the woman who gives birth to the child to be treated as the child's natural mother. *Id.* In turn, the husband of the

woman who gives birth to the child is also the child's parent if he provides sperm for or consents to the assisted reproduction. *See* RCW 26.26.710.

In addition, Washington adoption law does not prevent an adopted child from having more than two parents. Instead, Washington law provides that "any person who is legally competent and who is eighteen years of age or older may be an adoptive parent," without imposing a limit on the number of adoptive parents. RCW 26.33.140(2).

These provisions permit a child to have more than two parents, particularly if the parties agree, and it is prudent and sensible to assume that people in Washington have constructed families on the authority of these provisions. Similarly, the *L.B.* decision permits a person to be recognized as a child's *de facto* parent if (among other things) the child's biological or adoptive parent consents to and fosters the parent-like relationship.

c. The American Law Institute Recognizes That Children May Have Multiple Parents

The American Law Institute (ALI) has recognized that "[i]n practice . . . children are often cared for by adults other than parents," including stepparents and parental partners who function as coparents. Am. Law Inst., *Principles of the Law of Family Dissolution: Analysis & Recommendations*, at 5 (2002) (hereinafter "ALI Principles"). The ALI

has also recognized that disregarding the connection of such individuals to a child following dissolution "ignores child-parent relationships that may be fundamental to the child's sense of stability." *Id.*

Accordingly, the ALI supports extending parental rights in certain circumstances to adults other than a child's biological or adoptive parents, including situations which would result in a child having more than two parents. In particular, the ALI Principles recommend establishing rights for both "parents by estoppel" as well as "de facto parents" – although it should be emphasized that the ALI's use of the term "de facto parent" is not the same as this Court's use of the term. ALI Principles § 2.03(1)(b) and (c).

In *L.B.*, this Court cited the ALI Principles several times, but did not adopt the principles' definitions of "de facto parent" or "parent by estoppel" as written. Instead, the Court based its criteria for establishing *de facto* parent status on a four-part test previously announced by the Wisconsin Supreme Court, along with an additional factor identified by Maine's Supreme Judicial Court. *See L.B.*, 155 Wn. 2d at 708. However, the Court observed that "[u]nder slightly different standards than that which we adopt today, the [ALI] principles support recognition of *de facto* parents." *Id.* at 706 n.24. Just as the ALI's Principles supported this

Court's decision in *L.B.*, the principles also serve to support Mr. Corbin's ability to seek *de facto* parent status in this case.

2. Children May Form Strong Relationships With Multiple Parents And Those Relationships Should Be Protected

Considerable research demonstrates that "children can and do form close emotional bonds in multiple relationships." Jason D. Hans, *Stepparenting After Divorce: Stepparents' Legal Position Regarding Custody, Access, & Support*, 51 Fam. Relations 301, 301 (2002). This reality is particularly true in the context of stepfamilies, which have become an increasingly common family structure in the United States.[3]

To be sure, relationships between stepparents and stepchildren take many forms, and children do not always identify stepparents as part of their family – nor would all, or even most stepparents meet the stringent criteria set out in *L.B.* Sarah H. Ramsey, *Constructing Parenthood for Stepparents: Parents by Estoppel & De Facto Parents Under the American Law Institute's Principles of the Law of Family Dissolution*, 8 Duke J. Gender L. & Pol'y 285, 287-88 (2001). As a result, "[s]tep-family formation creates dynamic, complex familial structures often with

[3] In the United States, over 5 million children live with a stepparent. Rose M. Kreider, U.S. Census Bureau, U.S. Dep't of Commerce, *Living Arrangements of Children: 2004*, at 4 tbl. 1 (2008). Another 3.8 million children live in households where the child's biological parent cohabits with an unmarried partner. *Id.* at 6 tbl. 2.

more than two parents (biological, adoptive, and or functional), a phenomenon that conventional policymakers are not well versed in addressing." Sarah E.C. Malia, *Balancing Family Members' Interests Regarding Stepparent Rights & Obligations: A Social Policy Challenge*, 54 Fam. Relations 298, 308 (2005).

Although relationships within stepfamilies may be complex, "stepparent-stepchild relationships increasingly have come to be viewed as including potentially long-lasting bonds that exist independently from the marriages that created the connections." *Id.* at 309. In cases where, as here, a stepparent has effectively functioned as a child's parent, maintaining the parent-child relationship is of critical importance to the child's well-being.

It has long been recognized that "children need to experience secure attachments for optimal development." *Id.* at 306. Indeed, there is "near consensus . . . for the principle that a child's healthy growth depends in large part upon the continuity of his personal relationships." Katharine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 Va. L. Rev. 879, 902 (1984). As this Court has recognized, "[c]hild development experts widely stress the importance of stability and

predictability in parent/child relationships, even where the parent figure is not the natural parent." *McDaniels v. Carlson*, 108 Wn.2d 299, 310, 738 P.2d 254 (1987).

Not surprisingly, "the importance of continuity and stability in children's lives following divorce of their biological parents or a parent and stepparent is well-documented in the literature." Malia, *supra*, at 306. In addition, research has shown that "maintaining multiple parental relationships in stepfamilies has been associated with better child outcomes." *Id.* at 308.

These considerations go to the heart of the *L.B.* decision, which recognized the "clear legislative intent . . . to effectuate the best interests of the child in the face of differing notions of family and to provide certain and needed economical and psychological support and nurturing to the children of our state." *L.B.*, 155 Wn.2d at 707. As this Court noted in *L.B.*, "it is the duty of this court to 'endeavor to administer justice according to the promptings of reason and common sense.'" *Id.* (quoting *Bernot v. Morrison*, 81 Wash. 538, 544 (1914)). Here, it would run counter to reason and common sense to adopt a rule that prohibits former stepparents from seeking *de facto* parent status, regardless of the facts of the particular case. Such a holding would be inconsistent with the

fundamental principles underlying the *L.B.* decision and would result in children losing relationships with adults who have functioned in all respects as their parents.

3. Other States Have Not Limited *De Facto* Parent Status To Cases Involving Children Raised By Same-Sex Partners

Finally, it should be noted that other states have applied the *de facto* parent doctrine or similar common law doctrines in cases that did not involve same-sex couples. Ms. Reimen appears to suggest that the decision in *L.B.* should be limited to situations involving children "born into non-traditional families." But other jurisdictions have not applied the doctrine in such a cramped manner, nor does the reasoning or test set out in *L.B.* support such a narrow, categorically-based interpretation.

In *L.B.*, this Court noted that "[n]umerous other jurisdictions have recognized common law rights on behalf of *de facto* parents." *L.B.* at 704. To be sure, many of the decisions from other jurisdictions cited by the Court in *L.B.* involved children raised by same-sex partners. However, courts in other jurisdictions have also applied the *de facto* parent doctrine and similar common law doctrines in other situations – including cases involving stepparents.

For example, the Supreme Judicial Court of Maine permitted a stepparent to seek status as a *de facto* parent in *Young v.* Young, 845 A.2d

1144 (Me. 2004). The Maine court issued its decision in *Young* the same day of its decision in *C.E.W. v. D.E.W.*, 845 A.2d 1146 (Me. 2004), which held that a same-sex partner could seek *de facto* parent status. The concurrent issuance of these two decisions runs counter to Ms. Reimen's suggestion that *de facto* parent status should be available only in cases involving children "born into non-traditional families." Instead, as the Maine court recognized, the doctrine should be available on equal terms to any person who can satisfy the rigorous test for *de facto* parent status – including former stepparents.

Pennsylvania courts have also invoked common law doctrines to protect relationships between children and adults who have functioned as their parents, without limiting such remedies to cases involving children raised by same-sex couples. In *Liebner v. Simcox*, 834 A.2d 606 (Pa. Super. Ct. 2003), for instance, the court held that a man who had co-parented his female partner's child had standing to seek visitation with the child under the *in loco parentis* doctrine, which looks to similar criteria that this Court identified in *L.B.* for establishing *de facto* parent status. The court's decision in *Liebner* relied in significant part on the Pennsylvania Supreme Court's earlier decision in *T.B. v. L.R.M.*, 786 A.2d 913 (2001), in which the court held that the lesbian partner of a child's

biological mother had standing to seek parental rights under the *in loco parentis* doctrine.

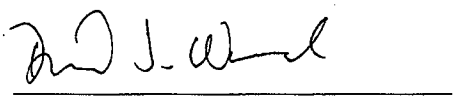
In New Jersey, the state Supreme Court held in *V.C. v. M.J.B.*, 748 A.2d 539 (N.J. 2000), that non-biological parents have standing to seek rights as a "psychological parent" and adopted a test similar to the *de facto* parent test established by this Court in *L.B.* While the *V.C.* case involved children raised by a lesbian couple, the court made it clear that its decision was not limited to such situations, stating that "[a]lthough this case arises in the context of a lesbian couple, the standard we enunciate is applicable to all persons who have willingly, and with the approval of the legal parent, undertaken the duties of a parent to a child not related by blood or adoption." *Id.* at 542. Since then, courts in New Jersey have applied the *V.C.* ruling in contexts that do not involve same-sex couples. *See, e.g.*, *P.B. v. T.H.*, 851 A.2d 780 (N.J. Super. 2004).

In short, courts in other states have not restricted the *de facto* parent doctrine or similar common law doctrines to cases involving children raised by same-sex parents. Similarly, this Court should not limit the holding in *L.B.* only to situations involving children parented by same-sex couples.

IV. CONCLUSION

This Court recognized in *L.B.* that the law must adapt to respond to the needs of children and families in the face of changing realities. As this case demonstrates, it is a reality that children sometimes have more than two adults functioning as their parents. It is also a reality that children may be harmed if the law fails to protect their relationships with adults who have functioned in all respects as their parents – and not simply in the context of families formed by same-sex couples. To ensure that the law responds to these realities and to maintain the principles underlying this Court's decision in *L.B.*, the decision by the Court of Appeals in this case must be reversed.

Respectfully submitted this 6th day of February, 2009.

By: 

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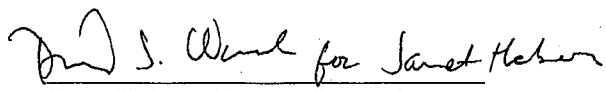

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